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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

AUG 04 2020

BY 
BRIAN GUTIERREZ, DEPUTY

Attorneys for Plaintiff, the Class, and Aggrieved Employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**

EVELYN MARTINEZ, as an individual
and on behalf of all others similarly situated,

Plaintiffs,

vs.

CITY OF HOPE NATIONAL MEDICAL
CENTER, a California corporation; and
DOES 1 through 50, inclusive,

Defendants.

Case No.:

CIV DS 2015729

**CLASS AND REPRESENTATIVE ACTION
COMPLAINT FOR:**

- (1) VIOLATION OF LABOR CODE
§ 226(a);
- (2) VIOLATION OF CAL. LABOR
CODE § 2698, *ET SEQ.*

DEMAND OVER \$25,000.00

Plaintiff Evelyn Martinez ("Plaintiff") hereby submits this Class and Representative Action Complaint ("Complaint") against Defendant City of Hope National Medical Center ("Defendant") and Does 1 through 50 (collectively, "Defendants") on behalf of herself and all other similarly situated current and former employees of Defendants, for penalties and/or damages for failure to provide complete and accurate itemized wage statements in violation of the California Labor Code as follows:

INTRODUCTION

1. This class and representative action is within the Court's jurisdiction under California Labor Code §§ 226 and 2698, *et seq.*
2. This Complaint challenges systemic illegal employment practices resulting in violations of the California Labor Code against individuals who worked for Defendants.

1 3. Plaintiff is informed and believes, and based thereon alleges, that Defendants,
2 jointly and severally, have acted intentionally and with deliberate indifference and conscious
3 disregard to the rights of all employees by failing to provide complete and accurate itemized
4 wage statements to Plaintiff and Class Members.

5 4. Plaintiff is informed and believes, and based thereon alleges, that Defendants
6 have engaged in, among other things a system of willful violations of the California Labor Code
7 by creating and maintaining policies, practices, and customs that knowingly deny its employees
8 the above stated rights and benefits.

9 5. The policies, practices and customs of defendants described above and below
10 have resulted in unjust enrichment of Defendants and an unfair business advantage over
11 businesses that routinely adhere to the strictures of the California Labor Code.

12 **JURISDICTION AND VENUE**

13 6. The Court has jurisdiction over the violations of California Labor Code §§ 226
14 and 2698, *et seq.*

15 7. Venue is proper because Plaintiff resides in the County of San Bernardino.

16 **PARTIES**

17 8. Plaintiff was employed by Defendants from on or about September 2018 through
18 on or about February 21, 2020. During her employment, Plaintiff was paid on an hourly basis,
19 including shift differential wages.

20 9. Plaintiff was and is the victim of the policies, practices, and customs of
21 Defendants complained of in this action in ways that have deprived her of the rights guaranteed
22 by California Labor Code §§ 226 and 2698, *et seq.*

23 10. Plaintiff is informed and believes, and based thereon alleges, that City of Hope
24 National Medical Center was and is a California corporation.

25 11. Plaintiff is informed and believes and thereon alleges that at all times herein
26 mentioned Defendant and Does 1 through 50, are and were corporations, business entities,
27 individuals, and partnerships, licensed to do business and actually doing business in the State of
28 California. As such, and based upon all the facts and circumstances incident to Defendants'

1 business, Defendants are subject to California Labor Code §§ 226 and 2698, *et seq.*

2 12. Plaintiff does not know the true names or capacities, whether individual, partner
3 or corporate, of the defendants sued herein as Does 1 through 50, inclusive, and for that reason,
4 said defendants are sued under such fictitious names, and Plaintiff prays for leave to amend this
5 Complaint when the true names and capacities are known. Plaintiff is informed and believes and
6 based thereon alleges that each of said fictitious defendants were responsible in some way for the
7 matters alleged herein and proximately caused Plaintiff and members of the general public and
8 class to be subject to the illegal employment practices, wrongs, and injuries complained of
9 herein.

10 13. At all times herein mentioned, each of said Defendants participated in the doing
11 of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
12 Defendants, and each of them, were the agents, servants and employees of each of the other
13 Defendants, as well as the agents of all Defendants, and at all times herein mentioned, were
14 acting within the course and scope of said agency and employment.

15 14. Plaintiff is informed and believes, and based thereon alleges, that at all times
16 material hereto, each of the Defendants named herein was the agent, employee, alter ego, and/or
17 joint venturer of, or working in concert with each of the other co-Defendants and was acting
18 within the course and scope of such agency, employment, joint venture, or concerted activity.
19 To the extent said acts, conduct, and omissions were perpetrated by certain Defendants, each of
20 the remaining Defendants confirmed and ratified said acts, conduct, and omissions of the acting
21 Defendants.

22 15. At all times herein mentioned, Defendants, and each of them, were members of,
23 and engaged in, a joint venture, partnership and common enterprise, and acting within the course
24 and scope of, and in pursuance of, said joint venture, partnership and common enterprise.

25 16. At all times herein mentioned, the acts and omissions of various Defendants, and
26 each of them, concurred and contributed to the various acts and omissions of each and all of the
27 other Defendants in proximately causing the injuries and damages as herein alleged. At all times
28 herein mentioned, Defendants, and each of them, ratified each and every act or omission

1 complained of herein. At all times herein mentioned, Defendants, and each of them, aided and
2 abetted the acts and omissions of each and all of the other Defendants in proximately causing the
3 damages as herein alleged.

4 **CLASS ACTION ALLEGATIONS**

5 17. **Definition:** The named individual Plaintiff seeks class certification, pursuant to
6 California Code of Civil Procedure § 382. Plaintiff proposes the following Class: all current and
7 former non-exempt employees of Defendants in the State of California who were paid shift
8 differential wages at any time from April 6, 2019, through the present, excluding any employees
9 who performed security guard services (the “Class”).

10 18. Plaintiff further reserves the right to amend such Class definition based upon
11 further discovery.

12 19. **Numerosity and Ascertainability:** The members of the Class are so numerous
13 that joinder of all members would be impractical, if not impossible. The identities of the
14 members of the Class are readily ascertainable by review of Defendants’ records, including
15 payroll records. Plaintiff is informed and believes, and based thereon alleges, that Defendants
16 failed to provide accurate itemized wage statements to its employees that identified the accurate
17 total number of hours worked whenever shift differential wages were paid, in violation of Labor
18 Code § 226(a).

19 20. **Adequacy of Representation:** The named Plaintiff is fully prepared to take all
20 necessary steps to represent fairly and adequately the interests of the Class defined above.
21 Plaintiff’s attorneys are ready, willing, and able to fully and adequately represent the Class and
22 the individual Plaintiff. Plaintiff’s attorneys have prosecuted and settled wage-and-hour class
23 actions in the past and currently have a number of wage-and-hour class actions pending in
24 California state and federal courts.

25 21. Defendants uniformly administered a corporate policy and practice of failing to
26 provide accurate itemized wage statements to Plaintiff and the Class that identified the accurate
27 total number of hours worked whenever shift differential wages were paid, in violation of Labor
28 Code § 226(a).

1 22. Plaintiff is informed and believes, and based thereon alleges, that this corporate
2 conduct is accomplished with the advance knowledge and designed intent to willfully and
3 intentionally fail to accurately record the number of hours worked.

4 23. Plaintiff is informed and believes, and based thereon alleges, that Defendants had
5 a consistent and uniform policy, practice, and procedure of willfully failing to comply with
6 Labor Code § 226(a).

7 24. **Common Question of Law and Fact:** There are predominant common questions
8 of law and fact and a community of interest amongst Plaintiff and the claims of the Class
9 concerning Defendants' policy and practice of failing to provide accurate itemized wage
10 statements to Plaintiff and the Class that identified the accurate total number of hours worked
11 whenever shift differential wages were paid, in violation of Labor Code § 226(a).

12 25. **Typicality:** The claims of Plaintiff are typical of the claims of all members of the
13 Class in that Plaintiff suffered the harm alleged in this Complaint in a similar and typical manner
14 as the Class Members. As with other California employees, Plaintiff was paid on an hourly
15 basis. Whenever shift differential wages were paid, however, the wage statements provided to
16 Plaintiff identified an inaccurate total number of hours worked, in violation of Labor Code
17 § 226(a)(2). The total number of hours worked shown appears to be many more hours than what
18 is actually worked listed on the wage statement, rather than the actual number of hours worked.
19 Therefore, Plaintiff is a member of the Class and has suffered the alleged violations of California
20 Labor Code § 226(a).

21 26. The California Labor Code upon which Plaintiff bases these claims are broadly
22 remedial in nature. These laws and labor standards serve an important public interest in
23 establishing minimum working conditions and standards in California. These laws and labor
24 standards protect the average working employee from exploitation by employers who may seek
25 to take advantage of superior economic and bargaining power in setting onerous terms and
26 conditions of employment.

27 27. The nature of this action and the format of laws available to Plaintiff and
28 members of the Class identified herein make the class action format a particularly efficient and

1 appropriate procedure to redress the wrongs alleged herein. If each employee were required to
2 file an individual lawsuit, the corporate Defendants would necessarily gain an unconscionable
3 advantage since it would be able to exploit and overwhelm the limited resources of each
4 individual plaintiff with their vastly superior financial and legal resources. Requiring each Class
5 Member to pursue an individual remedy would also discourage the assertion of lawful claims
6 by employees who would be disinclined to file an action against their former and/or current
7 employer for real and justifiable fear of retaliation and permanent damage to their careers at
8 subsequent employment.

9 28. The prosecution of separate actions by the individual Class Members, even if
10 possible, would create a substantial risk of (a) inconsistent or varying adjudications with respect
11 to individual Class Members against the Defendants and which would establish potentially
12 incompatible standards of conduct for the Defendants, and/or (b) adjudications with respect to
13 individual Class Members which would, as a practical matter, be dispositive of the interest of the
14 other Class Members not parties to the adjudications or which would substantially impair or
15 impede the ability of the Class Members to protect their interests. Further, the claims of the
16 individual Class Members are not sufficiently large to warrant vigorous individual prosecution
17 considering all of the concomitant costs and expenses.

18 29. Such a pattern, practice and uniform administration of corporate policy regarding
19 illegal employee compensation described herein is unlawful and creates an entitlement to
20 recovery by Plaintiff and the Class identified herein, in a civil action, for applicable penalties,
21 reasonable attorneys' fees, and costs of suit according to the mandate of California Labor Code
22 §§ 226, 2699 and Code of Civil Procedure § 1021.5.

23 30. Proof of a common business practice or factual pattern, which the named Plaintiff
24 experienced and is a representative of, will establish the right of each of the members of the
25 Plaintiff Class to recovery on the causes of action alleged herein.

26 **FIRST CAUSE OF ACTION**

27 **VIOLATION OF LABOR CODE § 226(a)**

28 **(BY PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS)**

1 31. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
2 though fully set forth herein.

3 32. Labor Code § 226(a) requires employers to provide itemized wage statements to
4 its employees that identify accurate information, including without limitation, the total number of
5 hours worked during each pay period. Defendants failed in their affirmative obligation to
6 provide accurate itemized wage statements to Plaintiff and the Class in violation of Labor Code §
7 226(a).

8 33. Plaintiff and the Class were paid hourly. As such, the wage statements should
9 have reflected the accurate total number of hours worked. Whenever shift differential wages
10 were paid, however, Defendants failed to identify the accurate total number of hours worked on
11 wage statements issued to Plaintiff and the Class. Instead, Defendants had a policy and practice
12 of identifying an incorrect total number of hours worked. This policy and practice is a direct
13 violation of Labor Code § 226(a).

14 34. Such a pattern, practice and uniform administration of corporate policy as
15 described herein is unlawful and creates an entitlement to recovery by Plaintiff and the Class
16 identified herein, in a civil action, for all damages or penalties pursuant to Labor Code § 226,
17 including interest thereon, attorneys' fees, and costs of suit according to the mandate of
18 California Labor Code § 226.

19 **SECOND CAUSE OF ACTION**

20 **VIOLATION OF LABOR CODE § 2698, *ET SEQ.***

21 **(BY PLAINTIFF AND AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS)**

22 35. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
23 though fully set forth herein.

24 36. Plaintiff brings this cause of action as a proxy for the State of California and in
25 this capacity, seeks penalties on behalf of all Aggrieved Employees from April 6, 2019, through
26 the present, for Defendants' violation of Labor Code § 226(a) as alleged above. Specifically,
27 Defendants violated Labor Code § 226(a) by failing to provide accurate itemized wage
28 statements to Plaintiff and other Aggrieved Employees that identified the accurate total number

1 of hours worked whenever shift differential wages were paid.

2 37. Plaintiff is an “aggrieved employee” pursuant to Labor Code § 2699, as Plaintiff
3 has suffered the violations of Labor Code § 226(a) alleged above.

4 38. On or about July 14, 2020, Plaintiff sent written notice to the California Labor &
5 Workforce Development Agency (“LWDA”) of Defendants’ violation of Labor Code § 226(a),
6 pursuant to Labor Code § 2698, *et seq.*, the Private Attorneys General Act (“PAGA”). As of the
7 date of the filing of this Complaint, the LWDA has not responded to Plaintiff’s written notice nor
8 indicated whether it intends to investigate the Labor Code violations provided for in the written
9 notice. Pursuant to Labor Code § 2699.3, Plaintiff also sent written notice of Defendants’
10 violations of the Labor Code to Defendants via certified mail.

11 39. As such, pursuant to Labor Code § 2699(a), Plaintiff seeks recovery of any and all
12 applicable civil penalties for Defendants’ violations of Labor Code § 226(a) for the time period
13 described above, on behalf of herself and other Aggrieved Employees.

14 **PRAYER FOR RELIEF**

15 WHEREFORE, Plaintiff prays for judgment for herself and all others on whose behalf
16 this suit is brought against Defendants, jointly and severally, as follows:

- 17 1. For an order certifying the proposed Class;
 - 18 2. For an order appointing Plaintiff as the representative of the Class;
 - 19 3. For an order appointing Counsel for Plaintiff as Class Counsel;
 - 20 4. Upon the First Cause of Action, for penalties and/or damages pursuant to
21 California Labor Code § 226, *et seq.*, and for interest, costs and attorneys’ fees;
 - 22 5. Upon the Second Cause of Action, for civil penalties according to proof pursuant
23 to the PAGA, Labor Code § 2698, *et seq.*, Labor Code § 226.3, and for costs and attorneys’ fees;
 - 24 6. On all causes of action for attorneys’ fees and costs as provided by California
25 Labor Code §§ 226, and 2699, and Code of Civil Procedure § 1021.5; and
 - 26 7. For such other and further relief that the Court may deem just and proper.
- 27
28

DATED: August 3, 2020

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By: 

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Employees